Supreme Court of the United States.

No. 28.—October Term, 1903.

Alice A. Cable, Administratrix, &c., Petitioner,
vs.
The United States Life Insurance Company of the City of New York.

On writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 30, 1903.]

This case comes here upon certiorari, applied for by the petitioner, who was the administratrix of the estate of Herman D. Cable, deceased. (186 U. S. 482.) The suit was brought in the Circuit Court of the United States for the Northern District of Illinois by complainant, The United States Life Insurance Company, of the city of New York and a citizen of that State, against Alice A. Cable, a citizen of the State of Illinois, to have a certain policy of insurance for $50,000, payable as therein stated, upon the life of the said Herman D. Cable, delivered up for cancellation, on the ground that the same had been procured by the fraud of the agents of the deceased. The bill averred that the complainant was an insurance company of New York, lawfully engaged in doing business throughout the United States, and particularly in Illinois, under a permit or license duly granted therefor; that it had issued its policy upon the life of Herman D. Cable, and that it was procured by the fraud and fraudulent representations of his agents, such fraud and fraudulent representations being set forth at length; also that defendant had commenced a suit in the State court of Illinois to recover upon the policy, which suit was instituted about one and a half hours prior to the filing of complainant's original bill. A supplemental and amended bill was filed, in which, among other things, it was alleged:

"10. Your orator further avers that the Constitution and laws of the United States of America confer upon your orator the right to remove into this court said action at law so begun against your orator; that, on the other hand, the State of Illinois, by legislative enactment, has sought to prevent the removal to this court by insurance companies of actions similar to said action so begun by said administratrix, and has practically destroyed such right or made its exercise impracticable, by providing, in substance, that an insurance company shall forfeit and lose its right to do business in the State of Illinois upon removing any such action into this court; that by removing said action to this court your orator might lose its right to transact business in the State of Illinois, and would certainly become involved in serious controversy with said State respecting the transaction of any subsequent business by your orator in said State; that the laws of said State upon certain questions of general insurance law, as

interpreted by its highest legal tribunal, and applicable to the facts in this case, are somewhat different from the laws of the United States as interpreted by the Federal courts, upon the same questions, and from the standpoint of the laws of the United States, are unduly and erroneously adverse to insurance companies; that your orator is entitled to an application of the law according to the decisions of the Federal courts; and that under the facts and circumstances, hereinbefore set forth in this bill, your orator is without a due and proper remedy at law in respect to the claim of said administratrix under said policy of insurance, but is without any remedy at law whatever in this court."

To this bill the defendant interposed a demurrer, among other things, for want of equity, and that demurrer was sustained by the Circuit Court but upon appeal to the Circuit Court of Appeals for the Seventh Circuit the decree sustaining the demurrer was overruled and the case remanded to the Circuit Court. (98 Fed. Rep. 761; same case, 39 C. C. A. 214.)

An answer was then put in by the administratrix of Cable's estate denying any fraud, and averring that she had, before the suit in the Federal court was commenced, herself commenced an action upon the policy in a proper State court of Illinois, and that it was her intention and desire to push such action to a speedy conclusion if permitted by the Federal court.

The suit herein was tried and a decree entered that the policy was procured on behalf of the deceased by constructive fraud, and that no actual fraud was intended or practiced in the delivery of the same, and it was thereupon decreed that the policy should be delivered up and cancelled. The defendant appealed from such decree to the Circuit Court of Appeals, and the complainant took a cross-appeal so as to bring up the findings of fact as to the constructive fraud, so that, as counsel said, "the case might be heard and considered in the Circuit Court of Appeals upon the whole evidence, regardless of the findings of the master and of the Circuit Court." This was done for the reason that, in counsel's belief, the evidence showed a deliberate and intentional concealment on the part of Lord, the agent of the deceased, and therefore a plain fraud perpetrated by such agent. The Circuit Court of Appeals affirmed the judgment and upon application this court granted the writ of certiorari as stated.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

It is contended, upon the part of the administratrix of the estate of the assured, that the court below had no jurisdiction on the ground that there existed a complete and adequate remedy (or defense) at law when the company was sued upon the policy, and that the effect of allowing this jurisdiction in the Circuit Court is to improperly deprive the defendant herein of a trial by jury.

It is conceded by the plaintiff in error that no cause of action existed in favor of the complainant herein upon the law side of the Federal court, the contention being that the company could set up, as a defense to any action brought against it in the Federal court, those allegations of fraud which, being proved, would constitute a perfect and complete defense to any action upon the policy.

The company, however, avers that the administratrix has elected not to bring her action in the Federal court, although she might have done so on the ground of diversity of citizenship, but has, instead of so doing, brought it in the State court, and hence the company would have no opportunity of setting up its defense in a Federal court in an action brought on the policy, and it insists that on that account it has not that complete and adequate remedy or defense at law, in the same jurisdiction, which it contends is necessary in such case.

It is true that the remedy or defense which will oust an equity court of jurisdiction must be as complete and as adequate, as sufficient and as final, as the remedy in equity, or else the latter court retains jurisdiction, and it must be a remedy which may be resorted to without impediment created otherwise than by the act of the party, and the remedy or defense must be capable of being asserted without rendering the party asserting it liable to the imposition of heavy penalties or forfeitures, arising other than by reason of its own act.

It is also urged, as an answer to the claim of the company, as to jurisdiction, that even though the remedy or defense at law must exist in the same (Federal) jurisdiction, yet it is within the power of the company, if it see fit to do so, to remove the action in the State court to the Federal court, and thus its defense at law, while adequate, would also be within the same jurisdiction in which its suit in equity was commenced.

It is further insisted by the administratrix that it is unnecessary that an action at law should have been commenced in the same jurisdiction, but it is sufficient that the defense would be available and complete if such an action should be commenced in a Federal court of law.

As to the removal of the action from the State to the Federal court, the company avers that, even assuming it had the right so to remove, yet it insists that such removal would be too hazardous to the company by subjecting it to a possible revocation of its license to do business in the State to be of any adequate avail.

It is also argued upon the part of the company that the position of a defendant in an action is not so advantageous as that of a plaintiff, as the plaintiff has the conduct of a cause largely within his own control; and it is said that the law as administered in the State court is not so favorable to insurance companies as is the case in the Federal

courts, and that the company had the right to an administration of the law by the Federal instead of the State court by reason of the diversity of citizenship.

These objections are to be considered.

In Hurd's Revised Statutes of Illinois, chap. 73, title "Insurance," in relation to foreign insurance companies, it is provided: That any such company must first file a written application for a license, in which it shall state that it desires to transact the business of insurance, and that it will accept a license according to the laws of the State, "and that said license shall cease and terminate in case, and whenever, it shall remove or make application to remove into any United States courts, any action or proceeding commenced in any of the State courts of this State, upon any claim or cause of action arising out of any business transaction, in fact, done in this State," &c. The statute also provides that if any company thereafter removes or applies to remove into the United States court any action commenced in a State court of the kind above mentioned, "it is hereby made the imperative duty of the auditor of public accounts at once to revoke, cancel and annul the license issued to such incorporated company, association or partnership; and thereafter no such incorporated company, association or partnership shall transact within this State any business for which it was incorporated until again duly licensed. In case such revocation of license shall be made because of the removal of or the attempt to remove any action from a State court of this State to any United States court, no renewal of such license shall be made within three years after such revocation." Provision is also made that if the license is revoked, publication of the fact shall be made in the newspapers.

This court has held that, although there may be power in a Federal court of equity in a proper case to order the delivery up and cancellation of a policy of insurance obtained upon fraudulent representations and suppression of facts, yet it will not generally do so when those representations and suppressions can be perfectly well established in a defense at law in a suit upon the policy, and it, therefore, affirmed a decree which dismissed, without prejudice, a bill filed for obtaining the delivery up and cancellation of a policy so issued, although the evidences of the fraud were considerable and a suit on the policy had been begun in an action at law after the bill in equity was filed. (*Insurance Company* v. *Bailey*, 13 Wall. 616.)

That was a suit by the company to obtain the delivery up and cancellation of certain policies of life insurance after the death of the assured, on the ground that the policies had been procured by the defendant, the widow of the deceased, by fraudulent suppression of material facts, and by the misrepresentation of others of the same class. The answer denied the

allegations made. It was held that the company would have a perfect defense at law in an action by the holder upon the policy of insurance, and for that reason equity would refuse to take jurisdiction of an action to compel the delivery up and cancellation of the policy. The court said:

"By the death of the *cestui que vie* the obligation to pay, as expressed in the policies, became fixed and absolute, subject only to the condition to give notice and furnish proof of that event within ninety days. Notice having been given and the required proof furnished, the obligation to pay certainly became fixed by the terms of the policies, and the sums insured became a purely legal demand, and if so, it is difficult to see what remedy, more nearly perfect and complete, the appellants can have than is afforded them by their right to make defense at law, which secures to them the right of trial by jury. Where a party, if his theory of the controversy is correct, has a good defense at law to 'a purely legal demand,' he should be left to that means of defense, as he has no occasion to resort to a court of equity for relief, unless he is prepared to allege and prove some special circumstances to show that he may suffer irreparable injury if he is denied a preventive remedy."

To the same effect are *Home Insurance Company* v. *Stanchfield* (1 Dillon, 424;) *Ætna Life Insurance Company* v. *Smith*, (73 Fed. Rep. 318.)

Complainant insists that in this case special circumstances are shown that it may suffer irreparable injury if jurisdiction be denied. Those special circumstances have already been mentioned and the question is whether they are sufficient to furnish ground for a Federal court of equity to take jurisdiction herein.

We start with the proposition that, to any action brought upon the policy in a Federal court, the company would have a complete and adequate defense by proving the fraud as alleged in the bill herein. That shows a defense in the same jurisdiction resorted to by the complainant herein. It is answered, however, that the action has not been commenced in the Federal court, but, on the contrary, the administratrix has commenced her action in the State court, and hence the defense, if made in the State court, is not in the same jurisdiction as that in which the bill in this case was filed. But the company may bring its defense within the same jurisdiction by removing the case from the State to the Federal court, which it has the right to do on account of the diversity of citizenship of the parties thereto. No stipulation or agreement, founded on a State statute or otherwise, which the company may have entered into could prevent the removal of the case in the exercise of its constitutional right. This has been so held in *Insurance Company* v. *Morse*, (20 Wall. 445,) and that case has been repeatedly approved. See *Doyle* v. *Continental Insurance Company*, (94 U. S. 535; *Barron* v. *Burnside*, 121 Id. 186.)

In *Doyle* v. *Continential Insurance Company*, (*supra*,) it was held that a State had the right to impose conditions not in conflict with the Constitu-

tion nor the laws of the United States, to the transaction of business within its territory by a foreign insurance company, and to exclude such company from its territory, or, having given a license, to revoke it, with or without cause, and it was further decided that an injunction to restrain a State officer from revoking and cancelling a license to a foreign company to do business within the State, because the company has, contrary to the State statute, removed a case from the State to the Federal court, would not be granted, and it was remarked that, as the State had the right to exclude a foreign insurance company, the means by which she caused such exclusion or the motives of her action were not the subject of judicial inquiry. Whether this case has been shaken by the subsequent cases of *Barron* v. *Burnside*, (121 U. S. 186, 199;) *Blake* v. *McClung*, (172 Id. 239, 254,) and *Dayton Coal & Iron Company* v. *Barton*, (183 Id. 23, 25,) it is not material here to discuss. It has from an early day been held that a corporation created by one State could transact business in another State only with the consent, expressed or implied, of the latter State, and that such consent might be accompanied by such conditions as the latter State might think fit to impose, provided they were not repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State free from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense. (*Lafayette Insurance Company* v. *French*, 18 How. 407; *Waters-Pierce Oil Company* v. *Texas*, 177 U. S. 28; *New York Life Insurance Company* v. *Cravens*, 178 Id. 389, 401; *Hancock Mutual Life Insurance Company* v. *Warren*, 181 Id. 73, 76.)

One thing is entirely clear, that the company could have removed this case from the State to the Federal court, notwithstanding the State statute or anything contained in its application for a license to do business within the State. Upon removal the company would have the full and adequate defense under the law as administered by the Federal courts that it would have in the equity case. Whether, as a result of such removal, the State would have the right by reason of the statute to revoke the license given to the company, is not a question which it is necessary for us to here discuss or determine. But assuming the right of removal, the company says that it may thereby subject itself to a revocation of its license, or at least to litigation, to prevent the State authorities from revoking it, and it ought not to be put to any such litigation or possible injury or inconvenience.

The embarrassment attaching to the complainant herein on account of a removal, if any, is one of its own creation. As a condition upon which it was admitted to do business in the State, it voluntarily signed the application, in which it promised to accept a license according to the laws of Illnois, and agreed that the license should terminate in case the company

should remove any action commenced in the State court to the United States court, as already stated. We think the existance of these facts furnishes no ground for appealing to a Federal court of equity to take jurisdiction of a suit to cancel the policy, where otherwise the court would have none. The State statute could not prevent the removal. If, because of a removal, ground was furnished for the revocation of the license, that fact would not justify a resort to a Federal court and ought not to, because, as we have said already, the contingency is one of the complainant's own creation, and it ought not, therefore, to be able to avail itself of an embarrassment which it has voluntarily created, as a foundation for jurisdiction in a Federal court which would not otherwise exist.

It signed its application to do business in order to come into the State and reap the profits which it thought it might earn by transacting its business in the State. There was no coercion upon it to make the application or to take the permit on the condition stated. Upon the whole, it chose to make such application and receive the license upon that condition.

If the condition be illegal and no ground for a revocation of the license, any subsequent litigation which the company may have by reason of such removal with the State officials to prevent the revocation of the license on that account is still matter caused by its own action, and cannot, in our judgment, furnish any ground for jurisdiction in the Federal courts.

Still less do we think that any foundation is laid for that jurisdiction based upon the theory that the company would not have the same control of the case as a defendant that it would as plaintiff. That is not the case in modern practice. The defendant can urge the case to trial against the desires of the plaintiff, and its defense may be shown as well and conveniently by a defendant, as the cause of action may be shown by the plaintiff. The right of the plaintiff to discontinue the action does not furnish ground for equitable jurisdiction. If it did, then equity would always have jurisdiction and the rule would be worthless.

The other ground stated as furnishing a special circumstance to show that complainant may suffer some irreparable injury if equity does not take jurisdiction, viz., that the law is more favorable to insurance companies as administered in the Federal than in the State court, and, therefore, equity ought to take jurisdiction in this case, upon the ground of the diversity of citizenship, cannot be regarded for a moment.

It is immaterial whether the assertion be conceded or denied. It furnishes no ground for equitable jurisdiction in a case like this. Where a plaintiff in a State court, which has jurisdiction over the subject matter, brings the defendant properly within such jurisdiction, he is entitled to a trial of his cause in that court, unless the case be removed to a Federal court upon some constitutional ground. If that ground exist, the removal can be made, but if it do not, equitable jurisdiction does not accrue to a

Federal court because it is thought the law as administered by that court more favorable to the party seeking its aid.

We think that, within the rule in *Insurance Company* v. *Bailey*, (*supra*,) the Circuit Court has no jurisdiction in this case. The judgment of the Circuit Court of Appeals for the Seventh Circuit and of the Circuit Court for the Northern District of Illinois must, therefore, be reversed, and the case remanded to the Circuit Court with directions to dismiss the bill, without prejudice.

It is so ordered.

Mr. Justice HARLAN and Mr. Justice WHITE dissented.

True copy.

Test:

Clerk Supreme Court, U. S.